

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: July 21, 2021

<p>* * * * *</p> <p>O.M.V.,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>SECRETARY OF HEALTH AND HUMAN SERVICES,</p> <p style="padding-left: 40px;">Respondent.</p> <p>* * * * *</p>	<p>*</p>	<p>UNPUBLISHED</p> <p>No. 16-1505V</p> <p>Special Master Dorsey</p> <p>Motion for Redaction.</p>
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Edward M. Kraus, Law Offices of Chicago Kent, Chicago, IL, for petitioner.
Laurie Wiesner, US Department of Justice, Washington, DC, for respondent.

ORDER GRANTING PETITIONER’S MOTION FOR REDACTION¹

On June 29, 2021, petitioner filed a motion to redact the undersigned’s June 16, 2021 Decision denying entitlement. Petitioner’s Motion for Redaction (“Pet. Mot.”), filed June 29, 2021 (ECF No. 124). For the foregoing reasons, petitioner’s motion is **GRANTED**.

I. RELEVANT PROCEDURAL HISTORY

On November 14, 2016, O.M.V. (“petitioner”) filed a petition under the National Vaccine Injury Compensation Program (“Vaccine Act” or “the Program”), 42 U.S.C. § 300aa-10 *et seq.* (2012).² Petitioner alleges he suffers “permanent disabilities [and] permanent neurologic

¹ The undersigned intends to post this Order on the United States Court of Federal Claims’ website. **This means the Order will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), petitioners have 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished order contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims’ website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 to -34 (2012). All citations in this Order to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

deficits” as a result of an influenza (“flu”) vaccine administered on November 15, 2013. Petition at 1 (ECF No. 1).

On June 16, 2021, the undersigned issued a decision denying entitlement. Decision dated June 16, 2021 (ECF No. 123). On June 29, 2021, petitioner filed a motion to redact his name to initials in the decision. Pet. Mot. at 1. In support of this request, petitioner states because he is a physician, “having his name publicly associated with a vaccine injury claim is likely to adversely impact his ability to establish and maintain a professional relationship with his patients and their parents, including potentially diminishing the perceived reliability of his recommendations.” Id. at 4. Additionally, “he is concerned that having the details of his medical condition published may adversely impact his licensure.” Id.

Respondent filed a response on July 13, 2021, outlining the standards for a motion for redaction and “defer[ring] to the sound discretion of the Special Master to determine which remedy strikes the appropriate balance between the public and private interests in this instance. Respondent’s Response to Pet. Mot. (“Resp. Response”), filed July 13, 2021, at 5 (ECF No. 125). Petitioner did not file a reply.

This matter is now ripe for adjudication.

II. DISCUSSION

A motion for redaction is governed by section 12(d)(4)(B) of the Vaccine Act. See § 12(d)(4)(B). That section provides that information concerning “medical files and similar files” may be redacted if its disclosure “would constitute a clearly unwarranted invasion of privacy.” Id. What constitutes a “clearly unwarranted invasion of privacy” requires balancing petitioner’s “right of privacy against the public purpose of the Vaccine Act.” W.C. v. Sec’y of Health & Hum. Servs., 100 Fed. Cl. 440, 460 (2011), aff’d, 704 F.3d 1352 (Fed. Cir. 2013). While a petitioner has an interest in keeping sensitive medical or other embarrassing information private, the public has an interest in disclosure, so as to increase public awareness of vaccines and the medical conditions they may or may not cause. Id. at 461. In other words, sensitive information is often the subject of the litigation, and “in cases where sensitive information is the subject of the dispute, that information is routinely disclosed in decisions, to enable the reader to follow and understand the decision maker’s rationale.” Castagna v. Sec’y of Health & Hum. Servs., No. 99-411V, 2011 WL 4348135, at *13 (Fed. Cl. Spec. Mstr. Aug. 25, 2011).

Although the Vaccine Rules make mandatory the redaction of a minor’s name, adult petitioner’s names, which are not similarly protected automatically, may also be redacted if the petitioner establishes proper grounds for redaction. See R.V. v. Sec’y of Health & Hum. Servs., No. 08-504V, 2016 WL 3776888, at *2 (Fed. Cl. Spec. Mstr. May 10, 2016) (“[A] petitioner needs to make some showing to justify the relief of redaction; redaction is not available simply at a petitioner’s beck and call.”). The undersigned will permit redaction in cases, such as this, where a specialized showing is made.

The facts and circumstances of this case warrant redaction of petitioner's name to initials. Petitioner made an adequate showing for redaction. **Accordingly, petitioner's motion for redaction of his name in the decision to initials is GRANTED.**

Thus, the public version of the decision denying entitlement shall be redacted to include only petitioner's initials, O.M.V. Moreover, the undersigned further directs the clerk to amend the case caption³ to the following:

* * * * *
O.M.V., *
*
 Petitioner, *
*
v. *
*
SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
*
 Respondent. *
*
* * * * *

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Special Master

³ If either party objects to the undersigned's redaction of the case caption, a motion requesting the undersigned to reconsider redaction of the case caption may be filed.